

## **REMARKS**

### **I. Claim Amendments**

Upon entry of this amendment, claims 46-51 will be pending. Claims 1-39 were previously canceled. Claims 40-45 have been canceled, while new claims 46-51 have been added. Support for the new claims may be found at paragraph 0031 and in Example 14. Accordingly, no new matter has been added.

### **II. Specification**

Applicant has amended the title to more aptly describe the invention for the claims being sought.

### **III. Double Patenting**

The Examiner has provisionally rejected claims 40 and 42 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 42 of co-pending Application No. 10/811,839, claims 14,16, 18, 20, 25, 31 and 36 of co-pending Application No. 10/811,838, claims 14, 20, 25, 31 and 36 of co-pending Application No. 10/610,909, and claims 14, 20, 25, 31 and 36 of co-pending Application No. 10/439,301.

Applicant has canceled claims 40 and 42, thereby rendering the Examiner's provisional double patenting rejection moot. Accordingly, Applicant respectfully requests that the non-statutory obviousness-type double patenting rejections be withdrawn.

### **IV. Claim Rejection Under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph**

Claims 41, 43-45 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. (Office Action, p. 6).

Applicant has canceled claims 41 and 43-45, thereby rendering the Examiner's indefiniteness rejection moot. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

**V. Claim Rejection Under 35 U.S.C. § 102(b)**

Claims 40-45 were rejected under 35 U.S.C. § 102(b) as being anticipated by Theoharides (WO 02/060393 A2). Applicant has canceled claims 40-45, thereby rendering the Examiner's § 102(b) rejection moot. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 102 be withdrawn.

With respect to the new claims, Applicant would like to point out that Theoharides (WO 02/060393 A2) neither teaches nor discloses a rutin-containing composition that can protect against allergies and allergic asthma. Applicant thus submits that Theoharides (WO 02/060393 A2) does not anticipate the current pending claims.

**VI. Claim Rejection Under 35 U.S.C. § 103(a)**

Claims 40-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable for obviousness over Ronca et al. (1998) in view of Scott et al. (1987) in view of Gelber et al. (U.S. Patent No. 6,576,267) in view of Noblie et al. (U.S. Patent No. 4,265,823 (in light of Dr. Duke's Phytochemical and Ethnobotanical Database) and in view of Weiner et al. (2002/0009448). (Office Action, p. 8). Applicant has canceled claims 40-45, thereby rendering the Examiner's obviousness rejection moot. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. § 103 be withdrawn.

With respect to the new claims, Applicant notes that none of the references cited (alone or combined) disclose, teach or suggest using rutin in a composition to protect against allergies and allergic asthma. Applicant thus submits that the references currently cited by the Examiner in support of the § 103(a) rejection do not render obvious the current pending claims.

### CONCLUSION

Applicant believes the rejections set forth in the Office Action have been overcome and that the application is in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued.

Applicant believes no fees are due with this Amendment and Response. However, if a fee is due, or a credit is owed, the Director is hereby authorized to make them to our Deposit Account No. 08-0219, under Order No. 2003133.00126US1.

The Examiner is encouraged to call the undersigned at the telephone number given below to move this application towards allowance.

Respectfully submitted,

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